

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MOI, an individual,
Plaintiff,

v.

CHIHULY STUDIO, INC., a Washington
corporation; DALE CHIHULY,
individually and as a married person;
LESLIE CHIHULY, individually and as a
married person,
Defendants.

No. 2:17-cv-00853-RSL

DEFENDANTS' AND COUNTERCLAIM
PLAINTIFFS' MOTION TO FILE
DOCUMENTS UNDER SEAL (MOTION
FOR PROTECTIVE ORDER AND
SUPPORTING DOCUMENTS)

NOTE ON MOTION CALENDAR:
February 1, 2019

CHIHULY INC., a Washington
corporation; and DALE CHIHULY,
individually,
Counterclaim-
Plaintiffs,

v.

MICHAEL MOI, an individual,
Counterclaim-
Defendant

MOTION TO FILE DOCUMENTS UNDER SEAL
(No. 2:17-cv-00853-RSL)

1
2
3
4
5
6
7
8
9
10
11
12

I. RELIEF REQUESTED

Defendants and Counterclaim-Plaintiffs Chihuly, Inc. and Dale Chihuly and defendant Leslie Chihuly (collectively, “Defendants” or “Chihuly”) move to seal confidential information contained in their Motion for Protective Order and the supporting declaration of Harry H. Schneider, Jr (“Schneider Declaration”). The material sought to be sealed includes non-public information protected by two confidential business agreements (the “Agreements”), private third-party information, and already-sealed orders of this Court (collectively, the “Confidential Information”). Good cause exists to support the sealing of the Confidential Information to protect the confidentiality of the Agreements and private information of third parties.

This Motion is supported by the authorities set forth below and the Declaration of Ian D. Rogers (“Rogers Decl.”)

13
14
15
16
17
18
19
20
21
22

II. FACTUAL BACKGROUND

Concurrently with this motion, Defendants are filing a Motion for Protective Order, which in turn is supported by the Schneider Declaration. The Motion for Protective Order seeks to protect sensitive confidential information, and in order to provide an adequate basis for the Court’s decision, describes the confidential information at issue. Chihuly discussed the same information in connection with its Motion for Disqualification of Counsel, Dkt. # 19 (Chihuly’s Motion to Seal dated June 22, 2017), at which time the Court granted Chihuly’s motion to maintain the information under seal, Dkt. # 55 (Order Granting Chihuly’s Motion to Seal). The instant motion requests that the Court seal information in a manner consistent with its prior sealing orders.

23
24
25
26

III. LEGAL AUTHORITY

A. The Legal Standard for Sealing Material

The strong presumption of public access to court records ordinarily requires the moving party to provide compelling reasons to seal a document. *Kamakana v. City & County of*

1 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But where the underlying motion is non-
2 dispositive, the showing required to rebut the presumption is far lower. *See, e.g., In re Midland*
3 *Nat. Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012) (holding
4 that where the sealed records are “attached to a non-dispositive motion . . . , the usual
5 presumption of the public’s right of access is rebutted.”); *Kamakana*, 447 F.3d at 1179 (“The
6 public policies that support the right of access to dispositive motions, and related materials, do
7 not apply with equal force to non-dispositive materials.”); *Phillips ex rel. Estates of Byrd v. Gen.*
8 *Motors Co.*, 307 F.3d 1206, 1213 (9th Cir. 2002) (“[W]hen a party attaches a sealed discovery
9 document to a nondispositive motion, the usual presumption of the public’s right of access is
10 rebutted, so that the party seeking disclosure must present sufficiently compelling reasons why
11 the sealed discovery document should be released.”). In the case of a non-dispositive motion, a
12 good-cause showing will suffice to seal any records attached to the motion. *Kamakana*, 447 F.3d
13 at 1180.

14 Here, the good-cause standard applies because the underlying Motion for Protective
15 Order is non-dispositive. *See Traylor Bros. v. San Diego Unified Port Dist.*, 2009 LEXIS 53827,
16 at *4-*5 (S.D. Cal. June 25, 2009) (finding that because “an order on a motion to disqualify does
17 not resolve the merits of the underlying causes of action, and is only tangentially related to the
18 merits,” the good cause standard for non-dispositive motions applied). Thus, the Court need
19 only find that good cause exists to seal the Confidential Information.

20 **B. The Court Should Redact the Confidential Information**

21 Defendants request sealing of the following information:

- 22 1. references to content protected by the Agreements;
- 23 2. third-party information; and
- 24 3. sealed orders of this Court and references thereto.

25 Each type of information is discussed below.

1 *The Agreements.* The Motion for Protective Order discusses aspects of the Agreements
2 that Moi has sought to obtain in discovery. Copies of the Agreements were provided to the
3 Court under seal as Exhibits A and B to the Declaration of Harry Schneider in Support of
4 Chihuly's Motion for Disqualification (Dkt. # 22). And the Court previously sealed both the
5 Agreements and references to them contained in Chihuly's briefing materials. Dkt. # 55. The
6 Court's prior sealing order is consistent with the weight of authority, as courts often grant
7 protective orders to protect confidential business agreements. *See, e.g., Phillips*, 307 F.3d at
8 1212 (citations omitted); *Alcaide v. Thomas*, 2015 WL 6087560, at *3 (D. Ariz. Oct. 16, 2015);
9 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116152, at *5 (W.D. Wash. Apr. 5, 2013); *Edifecs*
10 *Inc. v. Tibco Software Inc.*, 2011 WL 6066010, at *1 (W.D. Wash. Nov. 14, 2011); *Wacom Co.*,
11 *Ltd. v. Hanvon Corp.*, 2008 WL 623631, at *2-*3 (W.D. Wash. Mar. 4, 2008); *Hasbrouck v.*
12 *BankAmerica Housing Serv.*, 187 F.R.D. 453, 455 (N.D.N.Y. 1999).

13 The Agreements are, for purposes here, materially identical and their terms are explicitly
14 confidential. *See* Dkt. # 22, Ex. A at 4; Ex. B at 5.¹ A confidentiality violation would expose the
15 disclosing party to a claim for breach of contract, and the impacted third parties previously
16 expressed a desire to continue to maintain the privacy and confidentiality of these Agreements.
17 *See id.* ¶ 8; Ex. A at 6; Ex. B at 7-8. The confidentiality provisions of the Agreements cover and
18 protect additional underlying information related to the Agreements. *Id.*, Ex. A at 4; Ex. B at 5-6.
19 Thus, in addition to the Agreements themselves, the Court should also seal references to
20 information protected by the Agreements. The disclosure of this information could harm
21 Chihuly's business and further undermine the confidentiality provisions of the Agreements that
22 all parties specifically agreed to, and potentially subject the disclosing party to a claim of breach.
23 As the Court has determined previously, sealing is warranted in this context. *See Wacom Co.*,
24 2008 WL 623631, at *2-3; *Alcaide*, 2015 WL 6087560, at *3.

25
26 ¹ In order to reduce the amount of information filed under seal, Chihuly relies on information contained in
its previously sealed filings.

1 Here, the harm to Chihuly is not only monetary, but would invade the right of Chihuly
2 and the other parties to the Agreements to negotiate and enter into confidential agreements. *See*
3 *Alcaide*, 2015 WL 6087560, at *3. Given that the competing interest in this case—the public’s
4 right to access is already lessened for this non-dispositive motion, *see In re Midland*, 686 F.3d at
5 1119—good cause supports sealing references to the Agreements.² *See Wacom Co.*, 2008 WL
6 623631, at *2-3; *Alcaide*, 2015 WL 6087560, at *3.

7 *Private information related to third parties.* To provide context for the Court’s inquiry
8 into whether the information at issue is subject to discovery, the Motion for Protective Order also
9 includes details regarding the involvement of a third party in the creation of the privileged
10 information at issue. Again, this Court previously ordered that this information be maintained
11 under seal. Dkt. # 55. The Court’s decision to do so was sound, as this individual’s privacy
12 interest deserves protection, and these details could expose the individual to embarrassment or
13 unwanted public scrutiny. *See Seals v. Mitchell*, 2011 WL 1233650, at *3 (N.D. Cal. Mar. 30,
14 2011) (sealing deposition testimony concerning employment records and personnel history to
15 prevent embarrassment for defendant).

16 *Sealed court order.* Finally, Chihuly seeks to file under seal a sealed *ex parte* order of
17 this Court, included as Exhibit C to the Schneider Declaration, and references to that order in
18 Chihuly’s Motion for Protective Order. The sealed order implicates the private information
19 discussed above such that the Court has already determined that the order should be kept from
20 public view.

21 In sum, Defendants seek to file a limited amount of Confidential Information under seal:
22 redacted references to third-party information and confidential business agreements, and a copy
23 of a sealed order of this Court. To protect the confidentiality of the Agreements, promote
24

25 ² Because good cause exists to seal the Agreements, any excerpts or specific discussion of the same in
26 briefing should also be sealed. *Lisa O. v. Blue Cross of Idaho Health Serv., Inc.*, 2014 WL 12614479, at *1 (D.
Idaho July 30, 2014) (recognizing that “discrete instances of information otherwise appropriate for sealing” may
also become “intertwined with arguments” to also warrant sealing some briefing).

1 freedom of contract, and preserve the privacy of third parties, good cause exists to seal this
2 information.

3 IV. CERTIFICATION

4 Pursuant to LCR 5(g)(3)(A), counsel for Defendants certifies that they have met and
5 conferred with Plaintiff's counsel regarding the need to file the Confidential Information under
6 seal, ways to minimize the content to be filed under seal, and other alternatives to filing under
7 seal. On January 23, 2019, Defendants contacted Plaintiff's counsel to notify them of the
8 materials and information that they planned to file under seal, and to inquire if Plaintiff had any
9 proposal to avoid doing so. Rogers Decl. ¶ 2. Plaintiff's counsel did not respond. *Id.*

10 V. CONCLUSION

11 Good cause exists to seal the Confidential Information from the Motion for Protective
12 Order, and the Schneider Declaration.

13
14 DATED: January 24, 2019

s/ Harry H. Schneider, Jr., WSBA No. 9404

HSchneider@perkinscoie.com

William C. Rava, WSBA No. 29948

WRava@perkinscoie.com

Ian D. Rogers, WSBA No. 46584

IRogers@perkinscoie.com

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

20 Attorneys for Defendants Chihuly, Inc., Dale
21 Chihuly and Leslie Chihuly and Counterclaim-
22 Plaintiffs Chihuly, Inc. and Dale Chihuly

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify that on January 24, 2019, I caused the foregoing to be served on the following attorney(s) of record by the method(s) indicated:

Lincoln C. Beauregard	<input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid
Evan T. Fuller	<input type="checkbox"/> Via Hand Delivery
Connelly Law Offices	<input type="checkbox"/> Via Overnight Delivery
2301 North 30th Street	<input type="checkbox"/> Via Facsimile
Tacoma, WA 98403	<input checked="" type="checkbox"/> Via ECF
lincolnb@connelly-law.com	
efuller@connelly-law.com	

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 24th day of January, 2019.

s/ Harry H. Schneider
HSchneider@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099